

HOUSE BILL REPORT

HB 2444

As Passed House:

February 10, 1998

Title: An act relating to making technical corrections to sentencing laws enacted in 1997.

Brief Description: Making technical corrections to sentencing laws enacted in 1997.

Sponsors: Representatives Ballasiotes and Costa; by request of Sentencing Guidelines Commission.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/30/98, 2/5/98 [DP].

Floor Activity:

Passed House: 2/10/98, 96-0.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 11 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Koster, Vice Chairman; Quall, Ranking Minority Member; O'Brien, Assistant Ranking Minority Member; Cairnes; Dickerson; Hickel; McCune; Mitchell and Sullivan.

Staff: Yvonne Walker (786-7841).

Background:

1. *Murder in the Second Degree.* Murder in the first degree may be committed in a variety of ways. One way is premeditated intent to commit murder. Murder in the second degree can be committed by intending to commit murder but without premeditation. In some factual cases, the difference between the two mental states can be slight.

Murder in the first degree has a seriousness level XIV on the grid. Murder in the second degree's seriousness level is one below that at level XIII. However, prior to 1997 legislation, the top end of the standard ranges for murder in the second degree were several months below the bottom end of the standard ranges for murder in the first degree. For example, the standard range for an offender convicted of murder in the

second degree who does not have a prior criminal history is 123 to 164 months in prison. In contrast, the range is 240 to 320 months for an offender convicted of murder in the first degree if the offender does not have a prior criminal history.

In 1997, the Legislature passed a Senate Bill (chapter 365) that expanded the presumptive standard range for murder in the second degree so that the top end of the range is almost at the bottom of the range for murder in the first degree. For example, for an offender without any prior felony criminal history, the range is 123 to 220 months compared to the range for murder in the first degree which is 240 to 320 months.

In 1997, the Legislature also passed a House Bill (chapter 120) that added two new crimes (malicious explosion 2 and malicious placement of an explosive 1) to level XIII but did not change the width of the ranges.

2. *Sex Offender & Kidnapper Registration.* In 1997, the Legislature passed a law requiring certain kidnappers to register and made it a felony not to register. However, since the registration procedure that had applied before only related to sex offenders, failure to register was itself a sex offense. As a result, a kidnapper who failed to register could be guilty of a felony that was in violation of a sex offense.

3. *Manslaughter as a Serious Violent Offense.* Under the Sentencing Reform Act, manslaughter in the first degree is committed when a person recklessly causes the death of another person or intentionally and unlawfully kills an unborn child by assaulting the mother.

"Serious violent offense" is a subcategory of violent offense and means:

- (a) Murder in the first degree, homicide by abuse, murder in the second degree, manslaughter in the first degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or
- (b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

In 1997, the classification of manslaughter was increased from class B to class A, which means the statutory maximum penalty that may be imposed is life in prison; the seriousness level was raised from level IX to level XI which means the presumptive sentence ranges were increased; and the Legislature added manslaughter in the first degree to the list of "serious violent offenses."

The 1997 law made manslaughter in the first degree a "serious violent" offense, but did not require scoring this serious violent offense as three points on the sentencing grid which is required in other cases.

Summary of Bill:

1. *Murder in the Second Degree.* A conflict is resolved between two 1997 laws (Chapter 365 and 120) by creating a new seriousness level in the sentencing grid for murder 2 with the same range set in 1997.

A new seriousness level XIV is created for murder 2 with the same ranges set in 1997 but separate from the new crimes added to level XIII in 1997. The bill also clarifies the Sentencing Reform Act rule that requires the minimum term of a presumptive range to be no less than 75 percent of the maximum term except in cases of murder in the second degree. In these particular cases the minimum term must be no less than 50 percent of the maximum term.

2. *Sex Offender & Kidnapper Registration.* Provides that failure of a kidnapping offender to register will not be a sex offense unless the kidnapping was sexually motivated. This amendment still makes it a felony for a kidnapper not to register, but not a sex offense (unless the kidnapping was sexually motivated).

3. *Manslaughter as a Serious Violent Offense.* The triple scoring rule is applied to manslaughter in the first degree, the same as the other serious violent offenses. It replaces a list of specific crimes with a reference to "serious violent offenses," so triple-scoring will be automatic for any crimes added to the "serious violent" list in the future.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill resolves a conflict between two 1997 laws by creating a new seriousness level in the sentencing grid for murder 2, with the same range set in 1997. This is an attempt to clarify the Sentencing Reform Act rule that requires the minimum term of a presumptive range to be no less than 75 percent of the maximum term except in cases of murder in the second degree. In these particular cases the minimum term must be no less than 50 percent of the maximum term.

In addition, an amendment is made to clarify that failure of a kidnapping offender to register will not be a sex offense unless the kidnapping was sexually motivated.

Lastly, the bill replaces a list of specific crimes with a reference to "serious violent offenses," so triple-scoring will be automatic for any crimes added to the "serious violent" list in the future.

Testimony Against: None.

Testified: Jim Thatcher, Sentencing Guidelines Commission (pro).